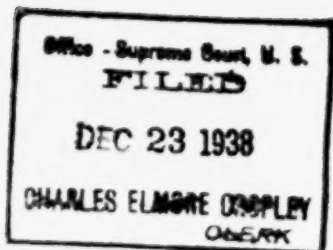


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No. 491

In the Supreme Court of the United States

OCTOBER TERM, 1938

THE STATE TAX COMMISSION OF UTAH ET AL.,
PETITIONERS

v.

W. Q. VAN COTT ✓

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME
COURT OF THE STATE OF UTAH

BRIEF IN OPPOSITION

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OPINION BELOW

The opinion of the Supreme Court of Utah (R. 47) is reported in 79 Pac. (2d) 6.

JURISDICTION

The judgment of the Supreme Court of Utah was entered on May 6, 1938 (R. 63). A petition for rehearing was denied and the order entered on July 5, 1938 (R. 63). On October 3, 1938, Mr. Justice Butler granted an extension of sixty days in the time within which a petition for the writ of certiorari might be filed in this Court (R. 66). The pe-

tition for a writ of certiorari was filed on December 1, 1938. The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code, as amended by Act of February 13, 1925.

QUESTION PRESENTED

Whether the court below correctly construed the taxing laws of its State to except from taxation by their terms the salaries received by respondent as Agency Counsel for Reconstruction Finance Corporation and as counsel for Regional Agricultural Credit Corporation of Salt Lake City, Utah.

STATUTE INVOLVED

The applicable statutory provisions are set forth in the Appendix (*infra*, p. 13).

STATEMENT

In 1935 respondent was Agency Counsel for the Salt Lake City Agency of Reconstruction Finance Corporation (herein called "RFC") and counsel for Regional Agricultural Credit Corporation of Salt Lake City, Utah (herein called "RACC") (R. 6-7). Respondent filed an income tax return as required by the Utah statutes for that year, claiming exemption with respect to salaries received from these governmental instrumentalities (R. 1-1a). Upon receipt of notice from the State Tax Commission of Utah that it proposed to adjust respondent's income tax liability to include such salaries, respondent filed with it a petition for re-determination of the tax (R. 5). This petition

was denied (R. 44). On certiorari to the Supreme Court of Utah, the order of the State Tax Commission of Utah was reversed and the exemption of respondent's salaries from taxation by the State of Utah sustained (R. 47-63).

ARGUMENT

The ground on which petitioners seek the writ of certiorari in this case, as set forth in their petition, is that the court below has decided a federal question in a way not in accord with the applicable decisions of this Court. A further ground assigned, not in the petition itself but in petitioners' brief, is that the decision conflicts with a decision of the Supreme Court of Montana. Respondent contends, on the contrary, that not only is there no conflict with previous decisions of this Court or with the decision of the Supreme Court of Montana, but that no federal question is presented because the decision below rests upon a non-federal ground adequate to support it.

I

THE QUESTION INVOLVED IN THIS CASE

The instant case does not raise the basic question which petitioner asserts, for respondent's exemption from taxation was sustained by the court below under the terms of the State statutes themselves.

A State legislature may grant exemptions from its taxing laws far beyond and wholly without

reference to any immunity under the Constitution and laws of the United States. *The statutes of the State of Utah confer a broad exemption from taxation in this case*, even if it were true, as petitioners allege, that the Constitution and laws of the United States do not.

Subsection (2) (g) of Section 80-14-4 of the Revised Statutes of Utah, 1933, as amended, exempts from taxation

Amounts received as compensation, salaries or wages from the United States or any possession [sic] thereof for services rendered in connection with the exercise of an essential governmental function.

It is not denied by petitioners that the salaries here involved were received "from the United States." The only question is whether the services here involved were "rendered in connection with the exercise of an essential governmental function" within the meaning of that provision, and this question was answered affirmatively by the court below. As that court said:

Our statute having made exempt salaries, wages, and compensation received "from the United States or any possession thereof for services rendered in connection with the exercise of an essential governmental function", we must decide this case *under our statute* in the light of the meaning of its terms as construed by the Supreme Court of the United States. [Italics added.] (R. 62.)

If comparable exemptions had been present in the State statutes involved in *James v. Dravo Contracting Company*, 302 U. S. 134, and *Silas Mason Co. v. Tax Commission*, 302 U. S. 186, those cases would in all probability have had to be decided differently as a matter of State law. With such a statutory exemption present, the distinction in *Helvering v. Gerhardt*, 304 U. S. 405, between taxation of a governmental instrumentality and taxation of the compensation received therefrom would not have been controlling.

Thus, it is clear that the fundamental and important questions of inter-governmental immunity, such as were considered and decided by this Court in *Helvering v. Gerhardt*, *supra*; *Helvering v. Therrell*, 303 U. S. 218, and similar cases, are not present here.

II

NO QUESTION OF FEDERAL LAW IS PRESENTED BECAUSE
THE DECISION BELOW RESTS UPON AN ADEQUATE NON-
FEDERAL GROUND

If the court below had held that respondent was not engaged in "the exercise of an essential governmental function," and that his compensation was taxable by the State of Utah, a federal question would necessarily have been presented. The question would have been the constitutionality of a State statute purporting to tax compensation received from the United States. But since the State statute was construed by the court below to ex-

empt this compensation, the case was disposed of without reference to any question of immunity under the United States Constitution, for there is no doubt as to the right of a State court to decide the *meaning* of the statutes of its own State. The decision below was, therefore, based on an adequate non-federal ground which this Court will not review. *State Automobile Insurance Association v. Glick*, 294 U. S. 697; *Moran v. Horsky*, 178 U. S. 205, 215. See also *Neblett et al. v. Carpenter*, No. 21, Oct. Term, 1938.

What constitutes "an essential governmental function" within the meaning of the State statutes can not be a federal question, since this Court does not recognize a distinction between essential and nonessential governmental functions *of the United States*. Such a distinction is borrowed from the decisions of this Court regarding the functions *of the States* (although even there the distinction of governmental and proprietary functions is more common) and is not applicable to the United States. *McCulloch v. Maryland*, 4 Wheat. 316; *Van Brocklin v. Tennessee*, 117 U. S. 151. Only recently this Court said in the *Therrell* case, *supra*, at page 223:

Among the inferences which derive necessarily from the Constitution are these: No State may tax appropriate means which the United States may employ for exercising their delegated powers; the United States

may not tax instrumentalities which a State may employ in the discharge of her essential governmental duties—that is those duties which the framers intended each member of the Union would assume in order adequately to function under the form of government guaranteed by the Constitution.

It follows that the present inquiry must be as to the meaning of a State statute.

That the court below considered and analyzed decisions of this Court in its interpretation of the Utah statute makes the question none the less an interpretation of the State statute. Cf. *Levy v. Superior Court*, 167 U. S. 175, 177. The line drawn by the Utah statute does not, as we have seen, *supra*, pp. 5 and 6, coincide with or depend upon the extent of federal immunity under the Constitution and laws of the United States. There being no Utah decision on the question, the court below looked to these decisions and to the decisions of other State courts for guidance.

III

THE DECISION BELOW IS IN ACCORD WITH THE DECISIONS OF THIS COURT

Assuming without conceding that the question of “an essential governmental function” within the meaning of the Utah statutes could be deemed a federal question, it is submitted that it is insubstantial and that the decision below is in strict accord with the applicable decisions of this Court.

The RFC and the RACCs were created and have been administered in the exercise of traditional and essential governmental functions, recognized at least since *McCulloch v. Maryland*, *supra*. RFC was created by Congress to give temporary financial aid to distressed financial, agricultural, and commercial institutions, and to railroads, in an effort to stabilize financial conditions, to strengthen the national credit and currency system, and to assist fiscal institutions, including those created by Congress. Its entire capital is supplied by the United States, which alone may subscribe to its capital stock; its management is vested in a board of directors appointed by the President by and with the advice and consent of the Senate, and its remaining funds, when not supplied directly by the United States Treasury, are obtained by the issuance of obligations fully guaranteed as to principal and interest by the United States. See *Baltimore National Bank v. State Tax Commission of Maryland*, 297 U. S. 209, 211.

The RACCs were created by the issuance of charters directly to them by RFC pursuant to Section 201 (c) of the Emergency Relief and Construction Act of 1932. These corporations were created to make loans and advances to farmers and stockmen, the proceeds of which were to be used for agricultural purposes. Originally the entire capital stock of these corporations was held in the name of RFC, and the boards of directors were appointed

by RFC. Thereafter, pursuant to subsequent legislative authority, the capital stock of these corporations was transferred to the Secretary of the Treasury, and the management transferred to the Farm Credit Administration. Designed as they were to give emergency relief in an agricultural crisis, their functions can be no less important than those of the federal land banks which deal with related phases of the same problem. With respect to the federal land banks this Court has said that they were "engaged in the performance of an important governmental function." *Federal Land Bank v. Priddy*, 295 U. S. 229, 231. See also, *Federal Land Bank v. Gaines*, 290 U. S. 247, 250, 254.

Ever since *McCulloch v. Maryland*, *supra*, it has been recognized that the government of the United States, which can exercise only its delegated powers, engages only in "governmental" functions. Since the constitutionality of the federal statutes here involved is not challenged, it follows that the federal functions here involved can not be classed otherwise than governmental, *Van Brocklin v. Tennessee*, *supra*; *Helvering v. Therrell*, *supra*; *Helvering v. Gerhardt*, *supra*, and there can, of course, be no difference in degree as to the essentiality of these functions undertaken under delegated powers.

Even if this case had presented the basic questions of intergovernmental immunity, as asserted by the petitioners, the decision below still does not de-

part from applicable decisions of this Court. It is in strict accord with *Rogers v. Graves*, 299 U. S. 401, which dealt with the immunity of the General Counsel of the Panama Railroad Company from taxation by the State of New York.

The cases relied on by petitioners to establish a departure are irrelevant. Such decisions as *Helvering v. Gerhardt*, *supra*, *Helvering v. Threll*, *supra*, and *Allen v. Regents*, 304 U. S. 439, dealt with State functions, and, as was pointed out above, the difference between State functions and functions of the United States is well established. Such decisions as *James v. Dravo Contracting Company*, *supra*, expressly stated that their facts required a different result from that reached in cases involving a State tax upon an employee of the United States or its instrumentalities.

IV

THE DECISION BELOW DOES NOT CONFLICT WITH A DECISION OF THE SUPREME COURT OF MONTANA

It is submitted that the decision below does not conflict with the decision of the Supreme Court of Montana in *Pomeroy v. State Board of Equalization*, 99 Mont. 534, 45 Pac. (2d) 316.

As has been demonstrated, the decision below rests upon an adequate non-federal ground. Accordingly, the decision of the Montana Supreme Court can in no way conflict with the decision of

the Utah Court finding such immunity *in the terms of the Utah statute*.

Even if the question of an "essential governmental function" within the meaning of the Utah statutes were considered to be a federal question, it is based on the provisions of a State statute differing materially from that involved in the *Pomeroy* case. In Montana, "salaries, wages, and other compensations received from the United States of officials or employees thereof * * *," Sec. 7, ch. 181, Laws of 1933,¹ are exempt from the State's income tax. Since one who is not an employee of the United States, and not immune under the Constitution and laws of the United States, could nevertheless receive compensation for the performance of an essential governmental function, the decision of the Supreme Court of Montana might well have been otherwise under a broad exemption statute such as was construed by the court below.

Moreover, it is decisive, as was pointed out by the court below, that the *Pomeroy* case was decided prior to the decision of this Court in *Rogers v. Graves, supra*, and would doubtless have resulted differently if it had been decided thereafter.

¹ Although the statutory provision actually reads "from the United States or officials or employees thereof * * *," this was held by the court in the *Pomeroy* case to be a typographical error.

CONCLUSION

It is submitted that not only is there no conflict with previous decisions of this Court or with the decision of the Supreme Court of Montana, but that no federal question whatsoever is presented in this case because the decision below rests upon a non-federal ground adequate to support it. Accordingly, it is respectfully submitted that the petition for a writ of certiorari should be denied.

W. Q. VAN COTT,
Pro se.

APPENDIX

REVISED STATUTES OF UTAH

80-14-4. GROSS INCOME.

Defined.

(1) "Gross income" includes gains, profits and income derived from salaries, wages or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property, also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits, and income derived from any source whatever.

Exclusions from Gross Income.

(2) The following items shall not be included in gross income and shall be exempt from taxation under this chapter: * * *

Tax-Free Salaries.

(g) Amounts received as compensation, salaries or wages from the United States or any possession [sic] thereof for services rendered in connection with the exercise of an essential governmental function.